THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Defective Appeal from Order No. 3 of 2004.
(Old FAFO No. 95 of 1990)

1. Saukin Singh S/O Shri Sunder Singh
   Resident of village Sem, Tahsil Pratapnagar,
   District Tehri Garhwal.
2. Sridhar Prasat Hatwal, S/O Shri Ram Chandra Hatwal,
   Resident of Hat, Tahsil Chamoli, District Chamoli.

….**Appellants**

Vs.

1. Smt. Mathura Devi, Wife of late Sri Sunder Singh
   Resident of village Jilashu, Tahsil and District Chamoli.
   (Claimant)
2. The National Insurance Company Gopeshwar.
   District Chamoli.
3. Jaikirit Singh S/O Shri Puran Singh,
   Resident of village Dushad Gaon, Tahsil and district Chamoli.

…Respondents.

Sri P.Pandey, learned counsel for the appellants.
Sri R.P. Nautiyal, Learned Counsel for the respondent no. 1.
Sri Lalit Belwal, Adv., learned counsel for the Insurance Company

Date June 17, 2006
P.C.: Hon'ble B.S. Verma, J.

Heard learned counsel for the appellants as well as learned counsel for the respondents on delay condonation application. There is delay of only 25 days in filing the appeal. Learned counsel for the respondents has no objection. Grounds shown for condoning delay are sufficient. Delay is condoned. Appeal is admitted.

At the outset, it may be mentioned that on 14-2-1998 a motor accident involving Bus No. USY-3298, took place due to rash and negligent driving by its driver with the result some passengers sustained fatal injuries and died and some of them suffered grievous injuries. Deceased Sunder Singh husband of claimant Smt. Mathura Devi was one of the passengers who lost life in the said accident. The accident occurred near place Baidanu (Langasu) Karnprayag. The claimants, who were dependents/legal heirs of the deceased as well as injured preferred different claim petitions before the Motor Accident Claims Tribunal Chamoli, which were decided by separate judgment and awards. Earlier

A.O.Nos. 989 of 2001, National Insurance Company Ltd. Vs. Awtar Singh and A.O. No. 493 of 2001, National Insurance Company Vs. Atma Ram and another, which arose out of Claim petition No. 6 of 1988 and Claim petition No. 9 of 1988 were already decided vide judgment dated 12-04-2006 by this Court. A reference to that judgment shall be made in the body of this judgment at appropriate place. Both the said appeals were allowed in part in view of earlier judgment dated 16-8-2004 passed in ***A.O. No. 990 of 2001, National Insurance Company Vs. Smt. Mathura Devi and others*** and the compensation awarded by the learned Tribunal was affirmed. Cases were sent back to the Tribunal for bifurcation of the amount between the Insurance Company and owner of the bus as per provisions of the old Act of 1939.

The present appeal under Section 173(1) of the Motor Vehicles Act 1988 **(*for short the new Act*)** is directed against the judgment and award dated 31.7.1990 passed by the then Motor Accident Claims Tribunal Chamoli (***for short the Tribunal***) passed in Claim Petition No. 5 of 1988, Smt. Mathura Devi Vs. Saukin Singh and others, whereby a compensation of 75,000/- was awarded to the claimant along with interest @ 9% per annum. Out of this amount, the owner of the vehicle Jaikrit Singh was ordered to pay Rs. 10,000/-, driver Sridhar Prasad was ordered to pay Rs. 5,000/-, the insurer was directed to pay a sum of Rs. 50,000/- and the appellant Saukin Singh was directed to pay amount of Rs. 10,000/- to the claimant within one month and in default of payment, claimant was ordered to get interest @ 9% per annum from the respective parties. Aggrieved Saukin Singh, owner of the vehicle, has come up in appeal.

The relevant facts necessary for a just decision of the appeal are that Smt. Mathura Devi, widow of deceased Sunder Singh filed claim petition under Section 110-A of the Motor Vehicles Act, 1939 for compensation of Rs. 1,50,000/- for the accidental death of the deceased involving the bus in question, which was being driven rashly and negligently by its driver.

Saukin Singh, the owner of the vehicle, filed his written statement, denied the allegations made in the claim petition and pleaded that car No. USY-3235 wrongly coming from the opposite direction hit the bus and there being a curve at the place of accident, the same could not be avoided. There was no negligence on the part of the answering opposite party. On the pleadings of the parties, the learned Tribunal framed three issues in the case. Issue No. 1 was whether deceased Sunder Singh was traveling by bus involved in the accident and he succumbed to his injuries. Issue No.2 was whether the accident occurred due to rashness and negligence on the parties of driver of the vehicle and whether the accident occurred when the bus driver had gone out of the bus. Issue no. 3 related to compensation and relief.

The learned Tribunal recorded evidence led by the parties, perused the same and after hearing both the parties came to the conclusion that a criminal case was registered against the driver of the bus in question, who confessed his guilt before the Magistrate. The witness Dinesh Chandra, P.W.2, is independent witness, who had given ocular account of the accident. He was also traveling in the same bus and sustained injuries. He clearly deposed that the bus was being driven rashly and negligently by the driver, which led to the accidental death of the deceased. On the other hand, the driver of the bus appeared in the witness box as D.W.1, who tried to save his skin from the liability, but he admitted that he confessed the guilt before the Magistrate regarding the same accident. Considering the oral and documentary evidence, it was held that the accident occurred due to the negligence on the part of the driver an not due to mechanical defect. Ultimately, the claim petition was decreed as mentioned above.

I have heard learned counsel for the appellant as well as learned counsel for the respondent and perused the material on record including the impugned judgmental and award.

Learned counsel for the appellant argued that the finding of the Tribunal on the point of negligence is not based on evidence on record. This argument is not tenable for the reasons given herein. Firstly, the record reveals that the driver of the bus was charge-sheeted by the police and criminal proceedings were drawn in the court of the Magistrate against the driver on the basis of F.I.R. lodged with the police. Moreover, the driver confessed his guilt before the Munsif Magistrate Karnprayag. It is thus prima facie proved that the driver of the bus was negligent in driving, otherwise he would not have confessed his guilt. Secondly, the evidence of P.W.2 Dinesh Chandra is on record, who had been travelling by the ill-fated bus and sustained injuries in the accident, clearly supports the contention that the bus driver was negligent. I have perused the evidence on the point. The learned Tribunal has rightly held that the driver of the bus was negligent in driving the vehicle at the relevant time. The finding on the issue of negligence recorded by the learned Tribunal is affirmed.

On the other hand, learned counsel for the Insurance Company has urged that the learned tribunal has not considered the provisions of the Old Act and this Court while deciding A.O. No. 990 of 2001 National Insurance Company Vs. Smt. Mathura Devi vide judgment and order dated 16-8-2004 has already sent back the case to the learned Tribunal for bifurcation of the amount to be paid to the claimants by the Insurance Company and owner of the vehicle n question as per provisions of the Old Act. Learned counsel for the parties have fairly conceded to this fact. Accordingly, on the basis of that judgment, other appeals, namely, A.O. No. 989 of 2001, National Insurance Co. Vs. Awtar Singh and A.O. No.493 of 2001, National Insurance Company Vs. Atma Ram were sent back to the Tribunal on the same line.

In view of the discussion aforesaid, this appeal being correlated with A.O.No.990 for 2001, decided on 16-8-2004, is liable to be sent back to the Tribunal for bifurcation if the amount

to be paid to the claimants by the Insurance Company and owner of the bus in question as per provisions of the Old Act. It is pertinent to mention that the finding of the Tribunal has already been affirmed on the point of quantum of compensation. The finding on the point/issue of negligence is hereby upheld. The learned Tribunal shall hear the appellant Saukin Singh and respondent no.2 as well as Insurance Company while deciding the liability between the owner/owners of the vehicle and Insurance Company.

In view of the above, the appeal stands partly allowed. The matter is sent back to the learned Tribunal as directed above. The learned counsel for the appellant shall ensure that the copy of this order is placed before the learned Tribunal concerned within a month from today.

(B.S. Verma, J.)

RCP